

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

SETH FISHMAN and LISA GIANNELLI ,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
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DATE FILED: 1/21/2022

20-cr-160 (MKV)

ORDER

MARY KAY VYSKOCIL, United States District Judge:

The Court has just learned that, based on a new safety protocol, no one may unmask in the courtroom — even in the HEPA-filter-outfitted witness and attorney boxes — unless they have tested negative for COVID-19 using an approved molecular diagnostic test. (Antigen tests are not approved.) If a person will be removing his or her mask on successive days, the person may test on an every-other-day schedule; otherwise, the speaker must test negative on the day of his or her appearance. If a speaker has had a confirmed case of COVID-19 (verified by either a doctor's note or a viral test result) within the prior ninety days, he or she will be exempted from these testing requirements. Confirmation of negative test results (or of a prior case of COVID-19) must be provided to the Court through its staff.

This new policy will be in effect when the trial resumes on Monday. It applies to all witnesses and counsel who intend to speak without a mask. Counsel should make adequate preparations to comply with the requirements before the jury arrives in the morning. The Court will not delay the proceedings because of this new policy.

The following is a list of the tests that are approved:

- PCR / RT-PCR / ddPCR / Rapid PCR (Polymerase Chain Reaction)
- NAA / NAAT (Nucleic Acid Amplification)
- AMP PRB (Amplified Probe) • LAMP (Loop-mediated Isothermal Amplification)
- Accepted molecular diagnostic test brands, including but not limited to:
 - Abbott ID NOW

- Quidel Lyra PCR
- Abbott Realtime PCR
- Cobas Qualitative PCR
- FTD PCR
- Xpert Xpress
- Simplexa Direct PCR
- RUCDR Infinite Biologics
- Lucira Health


The following are tests that are NOT approved:

- All tests that do not have FDA authorization or approval
- All Antigen (Ag) tests (including but not limited to Quidel Sophia, Abbott BinaxNOW Rapid Antigen Tests)
- All Antibody tests (such as IgG, IgA, IgM and Rapid Antibody Tests)
- All blood tests (such as fingerstick, venipuncture)
- All plasma tests
- All serum tests

If counsel have questions, or need assistance procuring an approved test or arranging for a location within the courthouse to perform a test, they should email covid_response@nysd.uscourts.gov. If needed, the Court has tests that can be made available to the parties free-of-charge and that can be taken one hour prior to the scheduled appearance time, provided that there is 24-hours' notice sent to the Covid Response email.

SO ORDERED.

Date: January 21, 2022
New York, NY


MARY KAY VYSKOCIL
United States District Judge